

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling that)	WC Docket No. 03-45
pulver.com's Free World Dialup is Neither)	
Telecommunications nor a)	
Telecommunications Service)	

OPPOSITION OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its opposition to pulver.com's petition for declaratory ruling that its Free World Dialup (FWD) service is neither telecommunications nor a telecommunications service.¹ The Commission should deny pulver.com's vague and unsubstantiated Petition, which raises novel regulatory classification issues that are more appropriately addressed in a comprehensive proceeding to consider Internet protocol (IP) telephony issues.

Pulver.com's Petition provides only a skeletal description of its FWD service. Indeed, the Petition contains much more information about what FWD service does *not* do than it does information about the nature and configuration of FWD service. The Petition also makes no mention of the future plans that pulver.com has for its FWD service, which it appears to be operating in the mode of a free trial membership. The Commission simply cannot issue a declaratory ruling about the regulatory classification of FWD service on such a flimsy record.

There are numerous examples of the glaring omissions in pulver.com's Petition. For example, in order to demonstrate that FWD service is not a telecommunications service, the Petition states that there are "no FWD connection fees, hardware or software fees, monthly subscription fees or per-call charges."² Pulver.com does not indicate whether it is receiving

¹ Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service filed on February 5, 2003 (Petition).

² *Id.*, at 3.

revenues from any other sources (e.g., equipment vendor payments or advertising revenues) in connection with FWD service. This is a relevant fact because it would be difficult for pulver.com to maintain that FWD service is not offered “for a fee” if the service is being funded by revenues from these other sources. Regardless, the Commission should reasonably expect that pulver.com expects to generate some type of revenues from FWD service once it has acquired a critical mass of users, which means the nature and configuration of the service will likely change in the future.³

In addition, pulver.com emphasizes the fact that FWD service provides connectivity only to other FWD members.⁴ A recent press release, however, indicates that FWD service will become an ENUM registrar, which will enable callers from outside the FWD community to call FWD members.⁵ The press release includes the following quote from Jeff Pulver:

By allowing FWD participants to take an “87810” country code assignment we are making a statement that the PSTN and the Internet are global assets. The backbone of the Internet has made it possible for me to communicate with people just about anywhere in the world, and people should be able to reach me regardless of my physical location. On the Internet with Free World Dialup, you can call a person, not a location.⁶

The press release goes on to state that ENUM makes it possible to “truly marry Internet and PSTN signaling for the purposes of staging preferred communications media.”⁷ Surely, pulver.com’s plan to register FWD service with ENUM is a material fact that is relevant to the Commission’s analysis of the service — yet pulver.com fails to mention it in the Petition.⁸

³ Given pulver.com’s claim that a declaratory ruling is needed to eliminate “investors’ perception of regulatory risk,” a reasonable question for the Commission to ask is how these investors expect to earn a return on their investment. *See id.*, at 2.

⁴ *Id.*, at 4.

⁵ *See* http://biz.yahoo.com/bw/030210/102182_1.html.

⁶ *Id.*

⁷ *Id.*

⁸ The Petition also states that FWD service does not provide members with access to the PSTN, but it is unclear whether PSTN connectivity will be offered to FWD members in the future. *See* Petition at 4.

Pulver.com also states that FWD service does not provide end users with transmission capabilities because members obtain transmission from their broadband connections and the public Internet.⁹ This overly simplistic statement glosses over the fact that there must be some transmission components of FWD service connecting pulver.com's Session Initiation Protocol (SIP) server to the public Internet. Either pulver.com is an Internet service provider that provides its own transmission to the public Internet or it is obtaining transmission between its SIP server and the Internet from a third-party Internet service provider. In either case, there is some transmission involved in the provision of FWD service.

More fundamentally, the Commission has never addressed the issue of whether or not a service that establishes a real-time connection between two parties over the Internet satisfies the statutory definition of "telecommunications" or a "telecommunications service."¹⁰ This is not an easy question to answer, notwithstanding pulver.com's attempts to downplay the significance of the issue in its Petition. Unlike a software provider that enables end users to initiate telephone calls on their computers using the Internet, FWD service actually establishes the connection and manages the calling between FWD members. In effect, FWD service is incorporating the transmission components of broadband information services and the Internet into an end-to-end service. The Commission did not even consider this type of IP telephony service in its 1998 *Universal Service Report to Congress*, let alone reach a conclusion about how such a service should be classified. It would not be appropriate for the Commission to resolve novel issues about an entirely new type of IP telephony service, which has far-reaching regulatory and policy implications, in the context of pulver.com's Petition. Thus, the Commission should deny the Petition and consider IP telephony service issues comprehensively in the context of a broader proceeding.

⁹ *Id.*, at 7.

¹⁰ Pulver.com expressly acknowledges that its FWD service is not an information service. *Id.*, at n.9.

For these reasons, the Commission should deny the Petition on the grounds that pulver.com has failed to provide sufficient evidence that would allow the Commission to determine the regulatory classification of FWD service. The Commission should instead address the far-reaching regulatory and policy implications of burgeoning IP telephony services, of which FWD service is just one example, in a comprehensive manner.

Respectfully Submitted,

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March 14, 2003